



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC CASE NO: 04-446
WITH RCW 42.17	)	
	)	
WASHINGTON BREATHE	)	
ALLIANCE	)	
	)	REPORT OF INVESTIGATION
	)	
Respondents.	)	
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I.

BACKGROUND

- 1.1 On January 12, 2004, companion bills HB 1868 and SB 5791 were introduced into the 2004 Washington State Legislature. The proposed legislation acted to ban smoking in public places, including bars, taverns, and bowling alleys, and to repeal sections of state law which formerly permitted the designation of smoking and non-smoking areas in public places. The legislation also allowed local government to adopt more restrictive ordinances to further restrict smoking in public places.
- 1.2 In January of 2004, advertisements featuring a call to action in support of the proposed legislation were aired on Washington television stations. Some of the advertisements, which featured former U.S. Surgeon General C. Everett Coop, indicated that they had been sponsored by an entity called the Washington BREATHE Alliance.
- 1.3 HB 1868 and SB 5791 had not advanced out of their respective committees as of February 17, 2004, the last date that each bill could be considered in its house of origin. The legislation banning smoking in all indoor public places was thus effectively defeated in the 2004 legislative session.
- 1.4 On March 15, 2004, a statewide initiative sponsored by Patty Carlson of Seattle, Washington and the organization Breathe Easy Washington was



filed with the Office of the Secretary of State. The initiative, which was assigned ballot number I-890, proposed a legislative ban on smoking in indoor public places that are currently exempt under Washington's Clean Indoor Air law, including restaurants, bars, taverns, bowling alleys, casinos and skating rinks. The sponsors were required to furnish 270,000 signatures by July 2, 2004, in order to qualify the initiative for that year's general election ballot. The initiative's sponsors failed to submit the required number of signatures by the July 2, 2004, deadline, and the initiative did not qualify for the 2004 general election ballot.

- 1.5 On March 29, 2004, a complaint against the Washington BREATHE Alliance and other individuals and entities was received from Ian Foraker. The complaint alleged that WA BREATHE and various individuals and entities failed to register and report as a political committee, failed to report direct and grass roots lobbying expenses, and failed to report in-kind contributions received from a statewide initiative committee.

## II.

### SCOPE

- 2.1 Staff reviewed the complaint letter filed by Ian Foraker, received on March 29, 2004.
- 2.2 Staff reviewed a sample legislative constituent letter printed from the American Lung Association Web site [www.lungaction.org](http://www.lungaction.org).
- 2.3 Staff reviewed an email, forwarded to PDC staff on May 26, 2004, and sent originally by Kevin Knox, BREATHE project director for the American Cancer Society.
- 2.4 Staff reviewed the response to the complaint filed by Ian Foraker, received from David Delvallee, Advocacy Director for the Northwest Division of the American Cancer Society on April 22, 2004.
- 2.5 Staff reviewed lobbyist reports filed by the following registered lobbyists and lobbying firms:
  - Michael O'Sullivan
  - Melanie Stewart
  - Kelli Balano
  - James Potts
  - Martin Flynn Public Affairs
  - Kristen Richmond
  - Michael Shaw
  - Nick Federici
  - Carrie Nyssen

- 2.6 Staff reviewed a Call for Proposals for grants awarded through the SmokeLess States program of the Robert Wood Johnson Foundation, printed from the Web site [www.rwjf.org](http://www.rwjf.org).
- 2.7 Staff reviewed L-6 Grass Roots Lobbying reports filed by the American Cancer Society on April 22, 2004 and July 8, 2004.
- 2.8 Staff reviewed the following documents, received from David Delvallee on June 3, 2004:
  1. Correspondence related to, and segments taken from, an American Cancer Society grant application to the Robert Wood Johnson Foundation.
  2. Invoices and payment account information for expenditures undertaken by the American Cancer Society.
- 2.9 Staff reviewed responses to staff's questions, received via email from Kevin Knox on August 10, 2004.
- 2.10 Staff reviewed responses to staff's additional questions, received via email from David Delvallee on February 11, 2005.
- 2.11 Staff reviewed an L-3c report filed by the American Cancer Society on October 18, 2004.
- 2.12 Staff reviewed an L-6 report filed by the American Heart Association Pacific/Mountain Affiliate on April 13, 2004.
- 2.13 Staff reviewed correspondence received from Kristen Richmond, Regional Director of Advocacy for the American Heart Association, on September 8, 2004.
- 2.14 Staff reviewed an L-3c report filed by the American Heart Association on October 5, 2004.
- 2.15 Staff reviewed an L-6 report filed by the American Lung Association of Washington on July 20, 2004.
- 2.16 Staff reviewed correspondence, L-3c reports, and amended L-6 reports filed by Anthony Peterson, Chief Financial Officer of the American Lung Association on August 25, 2004.
- 2.17 Staff reviewed responses to staff's additional questions, received in emails from Carrie Nyssen and Kevin Knox on October 25, 2004.

- 2.18 Staff reviewed responses to staff's questions, received via email on July 23, 2004 from Lee Tanuvasa, Tobacco Cessation/Prevention Specialist for the Washington Pacific Islander Families Against Substance Abuse (WAPIFASA).
- 2.19 Staff reviewed responses to staff's additional questions, received via email from Lee Tanuvasa on August 4, 2004.
- 2.20 Staff reviewed copies of mailed and emailed correspondence, received on July 29, 2004 from Brandie Flood, community organizer for the Center for MultiCultural Health.
- 2.21 Staff reviewed responses to staff's questions, received via email on September 7, 2004 from Shelley Cooper-Ashford, Executive Director of the Center for MultiCultural Health.
- 2.22 Staff reviewed C-4 reports filed by the Breathe Easy Washington campaign in support of I-890, received on September 23, 2004, October 12, 2004, and October 18, 2004.
- 2.23 The following persons were interviewed under oath by staff:
  - 1. David Delvallee, interviewed on June 3, 2004.
  - 2. Kevin Knox, interviewed on July 1, 2004.
- 2.24 The following persons were interviewed informally by staff:
  - 1. Brandie Flood, interviewed on July 28, 2004.
  - 2. Michael O'Sullivan, interviewed on July 30, 2004.
  - 3. Kristen Richmond, interviewed on September 7, 2004.

### III.

#### LAW

- 3.1 RCW 42.17.080 and .090 require political committees to file timely reports of monetary and in-kind contributions and expenditures.
- 3.2 RCW 42.17.150 states, in part:

"(1) Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with

the commission a lobbyist registration statement, in such detail as the commission shall prescribe[.]”

- 3.3 RCW 42.17.160 exempts certain persons and activities from registration and reporting under RCW 42.17.150, 42.17.170 and 42.17.200. Exempted are persons who restrict their lobbying activities to no more than four days or parts of four days during any three-month period, and whose total expenditures during this period on behalf of members of the legislature in connection with the lobbying effort do not exceed twenty-five dollars.
- 3.4 RCW 42.17.180 requires lobbyist employers to timely file special reports of monetary or in-kind contributions of more than \$100 in the aggregate in a calendar month to a candidate, elected official, employee of a state agency, or political committee.
- 3.5 RCW 42.17.200 requires any person who has made expenditures exceeding one thousand dollars in any three-month period or exceeding five hundred dollars in any one-month period, in presenting a program addressed to the public that is intended, designed, or calculated primarily to influence legislation, to timely register and report as a sponsor of a grassroots lobbying campaign, if these expenditures are not reported by a registered lobbyist, a candidate or political committee.

#### IV.

#### FINDINGS

- 4.1 On March 29, 2004, a complaint (**Exhibit 1**) was received from Ian Foraker, naming the following groups and individuals as respondents:
- Washington Backers of Responsible Education About Tobacco’s Harmful Effects (WA BREATHE Alliance)
  - American Cancer Society
  - American Heart Association
  - Robert Wood Johnson Foundation
  - Nick Federici
  - Melanie Stewart & Associates
  - Washington Pacific Islander Families Against Substance Abuse (WAPIFASA)
  - Center for MultiCultural Health (CMCH)
  - Mike Ryherd
  - Suzie Tracy
  - Kevin Phelps

### **Allegations by Ian Foraker**

4.2 The specific allegations made by Mr. Foraker were as follows:

1. That the Washington BREATHE Alliance failed to register and report expenditures made as a political committee;
2. That BREATHE failed to report contributions in excess of three million dollars from the Robert Wood Johnson Foundation;
3. That the registered lobbyists employed by member organizations of BREATHE conducted lobbying on behalf of the alliance, but failed to report compensation and expenses incurred on behalf of BREATHE as a separate employer;
4. That BREATHE failed to report voter opinion surveys as lobbying-related expenses; and
5. That BREATHE failed to report in-kind contributions received from the Breathe Easy Washington I-890 campaign, and that the I-890 campaign similarly failed to report making these contributions.

4.3 Included as an exhibit to Mr. Foraker's complaint was a page printed from the BREATHE Web site, [www.wabreathe.org](http://www.wabreathe.org), containing a mail-ready postcard, designed to be printed by members of the public and sent to members of the legislature. **(Exhibit 2)** In part, the postcard's printed message read as follows:

*"Dear Legislator; Please make all workplaces in Washington State smokefree. No one should have to trade their health for their job — all workers deserve the same protection from secondhand smoke as office workers... Studies of smoke-free restaurant laws from around the country (including CA, CO, NY City and MA) have clearly demonstrated that there is NO negative impact on restaurant sales or employment from these laws. In fact, the impact appears to be at the worst neutral, and even slightly positive."*

4.4 Included as an exhibit to Mr. Foraker's complaint was a page printed from [www.wabreathe.org](http://www.wabreathe.org), titled "Tips for Town Hall Meetings and District Forums." The page included sample questions relating to SB 5791 / HB 1868, and advice for effective communication with members of the legislature on the need for a ban on smoking in public places. **(Exhibit 3)** In part, the page read as follows:

*"Legislators hold Town Hall Meetings and District forums to hear what's on your mind. This is your opportunity to tell them why you want all indoor public places in Washington to be smokefree and you expect them to do something about it!"*

- 4.5 Included as an exhibit to Mr. Foraker's complaint was the text of an email inviting recipients to attend a meeting on September 11, 2003 at the Double Tree Hotel in SeaTac, Washington. **(Exhibit 4)** The invitation, which requested a RSVP to Brandie Flood, stated that the meeting would feature a keynote address by State Senator Rosemary McAuliffe and Representative Joe McDermott, the primary sponsors of SB 5791 and HB 1868. In part, the email read as follows:

*"In this meeting we will present information that will help educate and inform our supporters and the public about what Washington BREATHE is doing to make clean indoor air a reality..."*

*Who should come: Anyone interested in understanding, carrying and delivering the message that the time for clean indoor air is now! The time to protect all workers is now! And the time to protect the health of ALL of Washington is now!*

*The morning/lunch meeting will be followed by a strategy session in which participants will work together in regional areas to create an action plan for motivating decision makers to endorse clean indoor air laws."*

- 4.6 Included as an exhibit to Mr. Foraker's complaint was a copy of the results of a public opinion survey conducted for BREATHE by the polling firm Grove Insight. **(Exhibit 5)** The poll results, dated February 22, 2003, state that Washington voters strongly support legislative action to allow local control of smoking, and also strongly support banning smoking in all public places. The document concludes that "[g]iven the high levels of broad support for both proposals, legislators must understand that opposition to either runs counter to the will of the voters."

- 4.7 Included as an exhibit to Mr. Foraker's complaint was a copy of a BREATHE press release dated December 15, 2003. **(Exhibit 6)** The press release announced the sponsorship of SB 5791 / HB 1868 by Sen. McAuliffe and Rep. McDermott, discussed issues pertaining to secondhand smoke in public places, and referenced the results of the survey conducted for BREATHE by Grove Insight. The press release concluded with the following statement:

*"BREATHE is a collaborative partnership of the American Cancer Society, American Heart Association, American Lung Association of Washington, Washington Asian Pacific Islander Families Against Substance Abuse and the Center for MultiCultural Health. Its mission is to eliminate secondhand smoke in all indoor public places."*

- 4.8 PDC staff visited a Web page at the domain [www.lungaction.org](http://www.lungaction.org), containing a call to action in support of SB 5791 / HB 1868 and a sample constituent letter. **(Exhibit 7)** The Web page, which bore the "Washington BREATHE" heading, was dated January 12, 2004, the date that SB 5791 and HB 1868 were introduced into the legislature. It contained the following statement:

*"[I]t is time to start telling your legislators that the time is now to pass SB 5791 and HB 1868! Washington BREATHE and its partners urge you to contact your legislators and let them know that protecting all workers and patrons from the dangerous and noxious impact of secondhand smoke is their responsibility during the 2004 legislative session."*

The [www.lungaction.org](http://www.lungaction.org) page displayed links to two additional pages containing calls to action related to the proposed legislation banning smoking in public places. The last of these pages was dated February 9, 2004, shortly before the proposed legislation was finally considered defeated for the 2004 session.

- 4.9 On May 26, 2004, PDC staff received a forwarded email from Linda Matson. **(Exhibit 8)** The email was sent originally by Kevin Knox, with the subject "Please Stay In Touch." It stated the following:

*"The Washington BREATHE Alliance was funded through a grant request to the Robert Wood Johnson Foundation...That grant period and the existence of the Washington BREATHE Alliance comes to an end on May 31, 2004... Although we did not realize statewide passage of a smokefree workplace policy, we made great progress for future efforts. Just a few of the things you have helped us do over the past two years include:*

*Framed the issue in the media and the legislature around the need to protect all workers from the danger of secondhand smoke*

*Conducted a statewide poll that shows Washington voters overwhelmingly support smokefree policies in ALL public places*

*Elevated the issue in the minds of the media and legislators – it became one of the hot ones!*

*Gained the support of a majority of legislators and policy makers throughout the state.*

*Fought off an attempt by Big Tobacco and the gambling industry to push unacceptable legislation."*

The email went on to state that a signature drive was underway to qualify Initiative 890 for the November 2, 2004 election ballot. It referred recipients



to the American Cancer Society, the American Heart Association, the American Lung Association, Washington Pacific Islander Families Against Substance Abuse (WAPIFASA), and Center for MultiCultural Health (CMCH) for more information.

### **Response from WA BREATHE Alliance**

- 4.10 On April 9, 2004, PDC Compliance Director Phil Stutzman spoke with Kevin Knox regarding the complaint filed by Ian Foraker. **(Exhibit 9)** Mr. Knox stated that the five member organizations of BREATHE were the American Cancer Society, the American Heart Association, the American Lung Association, WAPIFASA, and CMCH. Of these five, he stated that the first three make monetary and in-kind contributions to the Alliance. He stated further that BREATHE is not a separate legal entity, and is not incorporated. For his full-time work as the BREATHE Project Director, he is paid not by the Alliance itself, but by the American Cancer Society.

Mr. Knox stated that some of the member organizations of BREATHE have registered lobbyists; in particular, he specified that Melanie Stewart lobbies for the American Heart Association, and Nick Federici lobbies for the American Lung Association. He stated that two of the individuals named as respondents in Mr. Foraker's complaint, Mike Ryherd and Susie Tracy, have no connection to BREATHE.

Finally, Mr. Knox confirmed that BREATHE sponsored four television advertisements featuring former U.S. Surgeon General C. Everett Coop. He stated that David Delvallee of the American Cancer Society had spoken to a PDC staff member, and had been told that BREATHE did not need to file reports with the PDC. He stated that L-6 reports of Grass Roots Lobbying activity were then in the process of being completed.

- 4.11 PDC staff examined lobbyist reports for James Michael Ryherd and Susan Tracy. Staff noted that Mr. Ryherd is an agent of the lobbying firm Soren Northwest, whose registered clients include the Fred Hutchinson Cancer Research Center. Susan Tracy is registered to lobby for numerous clients on the subject of health care. Neither Soren Northwest nor Susan Tracy is registered to lobby for BREATHE or its member organizations. Both the lobbying firm and Ms. Tracy reported compensation and expenses for work on numerous specific legislative matters during the 2003 – 2004 lobbyist registration cycle, but these matters did not include HB 1868 or SB 5791.
- 4.12 On April 22, 2004, a written response to the complaint filed by Ian Foraker was received from David Delvallee. **(Exhibit 10, pp 1-3)** In his response, Mr. Delvallee stated the following:

*"The American Cancer Society is the fiscal agent of BREATHE for a grant from the Robert Wood Johnson Foundation...Enclosed are completed PDC form L-6 (grass roots lobbying) documents for the months of January, February, and March 2004. Upon review of our expenditures in relation to the legislative campaign in support of HB 1868 (a comprehensive statewide clean indoor air law) we have determined that we were in error in not filing these documents with your office. The primary expenditure is related to the C. Everett Koop television ads during the past legislative session, some of which were a call to action for our volunteers and the general public. There were four versions of the television spot, and the scripts for each are also enclosed...for your review."*

In response to Mr. Foraker's allegations that BREATHE is "a coalition of organizations whose primary purpose is to influence state and local legislation" and in addition is "a fully functioning political committee," Mr. Delvallee stated the following:

*"The primary purpose of BREATHE is to educate the public about the dangers of second-hand smoke and to complement the efforts of organizations like the American Cancer Society in those organizations' efforts to advocate for public policy that reduce the incidence of cancer in the state. Washington BREATHE...receives no donations beyond the grant from the Robert Wood Johnson Foundation and in-kind contributions from the member organizations."*

- 4.13 The term "political committee" is defined in the Public Disclosure Law as a person or group of people with the expectation of raising or spending funds to support or oppose candidates or ballot propositions. Mr. Foraker's allegation that "WA BREATHE is a fully functioning political committee that has produced numerous pieces of literature...and legislative proposals designed to influence state law" appears to refer to the direct and grassroots lobbying efforts of BREATHE and its member organizations.
- 4.14 In his written response to the complaint, Mr. Delvallee went on to address Mr. Foraker's allegation that "the organizations who make up BREATHE received grants from the Robert Wood Johnson Foundation under the Smokeless states initiative totaling \$3,038,399 from June of 2001 through May of 2004. The primary purpose of these grants is for the passage of state legislation[.]"

In response to this allegation, Mr. Delvallee stated that Mr. Foraker's description of the level of the grants awarded to BREATHE was inaccurate. He stated that the Seattle offices of the American Cancer Society and the American Heart Association received grants for projects in Montana and Oregon, respectively. He stated that the Washington BREATHE Alliance

received a grant for slightly under a million dollars; he stated that the primary purpose of this grant was educational.

- 4.15 In response to Mr. Foraker's allegation that the registered lobbyists representing BREATHE member organizations also lobby on behalf of BREATHE itself, and that these lobbyists failed to report expenses incurred for the Alliance, Mr. Delvallee stated that the lobbyists cited in the complaint are employed or contracted by the American Cancer Society and the American Lung Association, and perform services solely on behalf of these two organizations. He stated that no grant funds were used to employ or contract with lobbyists.
- 4.16 PDC staff reviewed lobbyist reports in its imaging system filed by the following lobbyists:

Lobbyist / Lobbying Firm	Employer
J. Michael O'Sullivan	American Cancer Society
Melanie Stewart & Associates	American Cancer Society
Kelli Balano	American Heart Association
James Potts	American Heart Association
Martin Flynn Public Affairs	American Heart Association
Kristen Richmond	American Heart Association
Michael Shaw	American Heart Association
Nick Federici	American Lung Association
Carrie Nyssen	American Lung Association

Each of the above lobbyists and firms reported lobbying-related compensation and expenses incurred for the stated employers during the periods of January, February and March, 2004. With the exception of Melanie Stewart & Associates and James Potts, for whom no detail was provided, the reports filed by the above lobbyists stated that their work concerned "Anti-tobacco Bills," "Tobacco Control," "Clean Indoor Air," "Public Health Issues," "HB 1868" or "SB 5791."

- 4.17 Included as an exhibit to Mr. Foraker's complaint were excerpts from a call for proposals for grants offered by the Robert Wood Johnson Foundation in connection with its SmokeLess States program. PDC staff located the full CFP on the Web site [www.rwjf.org](http://www.rwjf.org). In part, the CFP stated the following (**Exhibit 11**):

*"The program will make new grants to up to 21 state-wide coalitions working in partnership with community groups. Grantees will develop and implement comprehensive tobacco control programs that include education, treatment, and policy initiatives. Specifically, the grantees and the partnerships they create under the program should:*

- *strengthen state-wide coalitions;*
- *foster public awareness efforts to denormalize tobacco use;*
- *enhance tobacco prevention and treatment capacity; and*
- *develop a policy plan in order to reduce the use of tobacco by youth."*

The CFP stated that grantees should conduct public education campaigns designed to reduce the demand for tobacco, using commercial advertising techniques to emphasize the harmful effects of tobacco use and help change community norms; in addition, grantees should develop and promote a policy agenda that would reduce tobacco use, including the promotion of policies supporting tobacco-free work places and public places. The CFP went on to state the following:

*"In general, more complex and ambitious projects in more heavily populated states will justify larger implementation budgets. Monies from other sources, including coalition members, will be needed to complete individual project budgets...In particular, funds will have to come from other sources for certain policy development activities as Foundation funds may not be used for lobbying."*

The CFP required grant applicants to state in writing their strategy to ensure that Robert Wood Johnson Foundation funds would "not be used to influence the passage of legislation or referenda[.]"

4.18 In his written response to the complaint, Mr. Delvallee stated that the December 15, 2003 press conference referenced by Mr. Foraker in his complaint featured Senator Rosemary McAuliffe and Representative Joe McDermott speaking on their own behalf, and not on behalf of BREATHE. He stated further that other speakers at the press conference were private citizens and a representative of the American Lung Association; the ALA representative spoke on behalf of the member organization, rather than BREATHE, and the other individuals represented only their own perspectives.

4.19 In response to the allegation that Kevin Phelps of the I-890 Breathe Easy campaign made unreported contributions to the WA BREATHE Alliance, Mr. Delvallee stated the following:

*"Mr. Phelps is not associated with the Washington BREATHE Alliance. Rather, he is associated with the Breathe Easy campaign in favor of Initiative 890, an entirely separate organization. Therefore, the Washington BREATHE Alliance is not responsible for reporting his, or anyone else's activity, on behalf of the Breathe Easy campaign."*

4.20 Enclosed with Mr. Delvallee's written response to the complaint were summaries of the four television advertisements featuring C. Everett Koop. **(Exhibit 10, pp 4-8)** The summaries included the title of each spot, the spoken and written text, and descriptions of the spots' visual aspects. Following these summaries, Mr. Delvallee attached a breakdown of the number of times each spot was run in each month from January through March, 2004, and the cost to produce and air each spot. The breakdown also separated the advertisements into the categories "Grassroots" and "Educational."

4.21 The advertisement titled "Time to Act" was described in this breakdown as a "Grassroots" advertisement. According to the summary provided by Mr. Delvallee, the ad featured the following spoken statement:

*"There is a historic opportunity in Washington to eliminate secondhand smoke from all indoor public places...Everyone has the right to breathe clean indoor air...It's time for our leaders to act. It's your right."*

4.22 The advertisement titled "Hotline" was described as a "Grassroots" advertisement. According to the summary provided by Mr. Delvallee, the ad opened with the following printed statement:

**Call the Legislative Hotline 1-800-562-6000**  
**Eliminate secondhand smoke from indoor public places**  
**[www.wabreathe.org](http://www.wabreathe.org)**

At the close of the ad, the legislative hotline was again displayed on the screen, and was accompanied by the following spoken statement:

*"Call the legislature. Demand smokefree indoor public places."*

4.23 According to the summary provided by Mr. Delvallee, the advertisement titled "It's your right" duplicated the "Time to Act" advertisement, except for the omission of the spoken statement *"It's time for our leaders to act."* The advertisement titled "Waitress" did not include a call to action, or any reference to a legislative proposal or to political leaders. These two advertisements were described in the breakdown of television pieces as "Educational" advertisements.

4.24 According to Mr. Delvallee's breakdown, the "Time to Act" advertisement ran 39 times in January and 78 times in February, 2004. At \$225 per airing, the breakdown stated that expenditures for this advertisement totaled \$26,235. The "Hotline" advertisement ran 62 times in February, 2004, for a total cost of \$13,950. The total expenditures for television

advertisements featuring C. Everett Koop which were described by Mr. Delvallee as examples of grassroots lobbying was \$40,185.

### **L-6 Filings by the American Cancer Society**

- 4.25 Enclosed with Mr. Delvallee's April 22, 2004 response to the complaint were L-6 Grass Roots Lobbying reports covering the months of January, February, and March, 2004. **(Exhibit 10, pp 9-14)** The report covering the month of January 2004 listed \$19,649 in grass roots lobbying expenditures, including \$8,775 in television expenses. The report covering the month of February listed \$36,221 in new grass roots lobbying expenditures, including \$31,500 in television expenses. The report covering the month of March listed \$7,204 in new grass roots lobbying expenditures; no television expenses were listed for that month. The total grassroots lobbying expenses for the three months combined was \$63,074.

The L-6 reports indicated that they were filed not on behalf of BREATHE, but on behalf of the American Cancer Society, which was identified as the sponsor of the grassroots lobbying campaign in support of HB 1868 and SB 5791. The reports did not list any monetary contributions from sources outside the American Cancer Society, and did not indicate the date of the earliest expenditure for grassroots lobbying which triggered a reporting requirement.

### **Interview with David Delvallee**

- 4.26 David Delvallee, Advocacy Director for the Northwest Division of the American Cancer Society, was interviewed under oath on June 3, 2004. In response to staff's question of whether the grant of \$987,932 from the Robert Wood Johnson Foundation was used in grass roots lobbying activity, Mr. Delvallee stated the following:

*"No dollars from Robert Wood Johnson are to be used for grass roots lobbying activity. They are solely for educational purposes that will, that is intended to compliment what the partner organizations do in terms of lobbying."*

He then went on to state:

*"We segregate all of our restricted dollars here at the American Cancer Society as part of our responsibilities with fiscal agent so that anything that has anything to do with legislative lobbying or grass roots lobbying comes from unrestricted dollars... The Robert Wood Johnson dollars are used for*

*educational purposes and are, like I said, made to compliment the efforts that the American Cancer Society, among others are doing in relation to tobacco. Whether or not we received any Robert Wood Johnson dollars at all and in some states the American Cancer Society has no connection with the Robert Wood Johnson Foundation, we still are very active in tobacco related legislation."*

- 4.27 In the interview, Mr. Delvallee stated that there were two paid staff members representing the American Cancer Society within BREATHE, including Kevin Knox, the BREATHE Project Director. He stated that the other four member organizations each have one paid staff person representing them within BREATHE. The representatives of the American Heart Association and the American Lung Association, Kelli Petragallo and Carrie Nyssen, were also registered lobbyists for their respective employers.

Mr. Delvallee stated that the paid staff member representing the Washington Asian/Pacific Islander Families Against Substance Abuse (WAPIFASA) within BREATHE was Lee Tanuvasa. He stated that the paid representative of the Center for MultiCultural Health (CMCH) was Brandie Flood. A review by staff of PDC filings indicated that neither Mr. Tanuvasa nor Ms. Flood is a registered lobbyist, and that neither WAPIFASA nor CMCH has a registered lobbyist.

Mr. Delvallee stated that "[e]ach of the five member organizations do dedicate a certain amount of staff time to the alliance. For example, some of my time, some of Mike O'Sullivan who is the advocacy manager for the American Cancer Society. And Cheryl Belcher who is our grass roots organizer all dedicate a portion of their time. They are not paid by the Washington BREATHE Alliance, however. They are paid by the American Cancer Society. It's considered in-kind support for the project."

- 4.28 In the interview, Mr. Delvallee was asked about the May 25, 2004 email from Kevin Knox, listing the legislative accomplishments of the BREATHE Alliance. In response to staff's question of how these goals were accomplished, and whether Robert Wood Johnson Foundation funds were used to accomplish these goals, he stated the following:

*"No Robert Wood Johnson dollars were used to accomplish the goals in terms of any kind of legislative activity. Certainly the partner organizations were very active at the legislature. The American Heart Association, the American Lung Association and the American Cancer Society all retain with our own agency funds, paid lobbyists that were the primary catalysts for any kind of legislative activity in Olympia during the 2004 session...What*

*might have been reflected there was the partner organizations in conjunction with BREATHE made some of these accomplishments."*

- 4.29 When asked whose funds paid for the TV advertisements featuring calls to action, and other examples of grass roots lobbying, Mr. Delvallee stated that the funds came from the BREATHE partner organizations:

*"Primarily the American Cancer Society, the American Lung Association and the American Heart Association... There were several different spots that were produced as you know. The ones that were call to action, that portion of the funds were covered by the partner organizations. The others that were purely educational, that did not include a call to action, were funded by the Robert Wood Johnson dollars."*

Mr. Delvallee stated that a total of \$100,000 was paid to the media firm Belo Marketing Solutions for television advertising. He stated that this figure included a \$50,000 payment from restricted Robert Wood Johnson Foundation funds on December 29, 2003 for educational advertisements. He stated that a second payment of \$50,000 was made on February 24, 2004, and that this payment included an additional \$10,000 from restricted funds. The remaining \$40,000 came from unrestricted funds supplied by the BREATHE partner organizations.

When asked whether the L-6 reports filed April 22, 2004 included all expenditures for the television ads featuring a call to action regarding the proposed ban on smoking in indoor public places, Mr. Delvallee stated that the reports did include all such call to action expenditures.

- 4.30 When asked whether the \$63,000 in total grassroots lobbying expenses reported on the American Cancer Society's L-6 filings included contributions from the other BREATHE member organizations, Mr. Delvallee stated that that figure did include the payments from the partner organizations.

Staff asked Mr. Delvallee to explain why contributions from the BREATHE member organizations were not listed on line 6 on the reverse side of American Cancer Society's L-6 reports. In response, he stated that the contributions were originally understood as in-kind, and not reportable in that section of the form. He stated that if this understanding was incorrect, the form would be amended.

- 4.31 In the interview, staff described certain calls to action located on the Web at the domain [www.lungaction.org](http://www.lungaction.org), and asked Mr. Delvallee whether it was the intent of the American Cancer Society to include expenses for those calls to action in their L-6 filings as part of BREATHE's overall grass roots



lobbying efforts. In response, Mr. Delvallee stated that these expenses were incurred by the American Lung Association directly, and were not included in the L-6 reports filed by the American Cancer Society.

4.32 When asked whether the public opinion survey conducted by Grove Insight in February of 2003 was used in any of BREATHE's public communications, Mr. Delvallee stated that to his knowledge, the primary public use of those survey results was the BREATHE media release dated December 15, 2003.

4.33 In the interview, Mr. Delvallee confirmed that the I-890 Breathe Easy Campaign had not extended support of any kind to the Washington BREATHE Alliance. He stated that the two organizations had not participated in any joint events, although members of the Breathe Easy Campaign had been in attendance at some BREATHE functions. He stated that these individuals attended the events as members of the public, rather than through a coordinated plan or agreement between the groups.

4.34 Mr. Delvallee stated that the BREATHE member organizations were supporting the Breathe Easy I-890 campaign. He described this support in the following manner:

*"The... American Heart Association, the American Lung Association and the American Cancer Society all are supporting, with non-financial support, but all are supporting the Initiative 890 campaign. That is, we are trying to notify our volunteers, we are collecting signatures at our events... To clarify, we have not run any ads, we have not sent out any kind of mailing other than just noticing it on our websites and email... for our volunteers."*

He stated that he was currently seeking to determine the staff hours and other expenses which American Cancer Society incurred through work related to I-890, and would inform the Breathe Easy campaign of these expenses.

4.35 In response to staff's question of when expenditures by the American Cancer Society / BREATHE Alliance for a call to action in support of the proposed indoor smoking ban first reached the reportable \$500 threshold, Mr. Delvallee stated that expenditures reached this threshold immediately after the start of the 2004 legislative session on January 12, 2004.

4.36 When asked why the American Cancer Society and the Washington BREATHE Alliance did not register and report as a grass roots lobbying campaign before April 22, 2004, Mr. Delvallee stated that it was because of confusion over their requirement to do so. He stated that it was information

in the media which first brought to his attention that BREATHE or its member groups had not filed the required disclosure reports.

He stated that to his knowledge, no one from the Alliance or its component groups had contacted PDC staff at any point for guidance prior to April 22, 2004, when the L-6 reports were filed. Contrary to the assertion of Kevin Knox, Mr. Delvallee denied having been told by PDC staff that BREATHE had no reporting requirement.

In closing, Mr. Delvallee added the following statement:

*"I think that because of the confusion and because of the complexity of this type of a grant that we do need to do a better job of the reporting and I'm hoping that I can get guidance to disclose everything that we need to disclose. That we in no way are trying to hide any information, we're just trying to figure out what it is that we need to report and what we don't."*

#### **Documentation of Grant Activity / BREATHE Lobbying Activity**

- 4.37 On June 3, 2004, PDC staff received a fax from David Delvallee, containing correspondence and other documents related to the American Cancer Society's grant application to the Robert Wood Johnson Foundation's SmokeLess States Program, and also including invoices and payment account information for expenditures undertaken by the American Cancer Society. **(Exhibit 12)**

Included in the above documents was a copy of correspondence from Peter Goodwin, Vice President and Treasurer of the Robert Wood Johnson Foundation, to the staff of the Northwest Division of the American Cancer Society. **(Exhibit 12, pp 1-2)** The correspondence discussed the conveyance of grant funds to the American Cancer Society, and guidelines for the use of these funds. It stated that grantees were subject to random audits to ensure that grant funds were being used for their intended purpose.

- 4.38 Also included in the fax was a copy of an attachment to the American Cancer Society's grant application, titled "Appendix C: Executive Summary." **(Exhibit 12, pp 3-4)** In part, this attachment stated the following:

*"BREATHE...members understand the prohibition on using Smokeless States Program foundation funds for lobbying activities. At the same time, lobbying is an important component of advocacy for the elimination of secondhand smoke in Washington State's public places. Lobbying efforts*

*linked to the elimination of secondhand smoke will be supported by non-foundation...funds drawn from unrestricted donations received by member organizations. Specifically, the following amounts have been committed to support lobbying by BREATHE member organizations:*

- American Cancer Society – NW Division – \$68,000
- American Heart Association – \$21,000
- American Lung Association of Washington – \$30,000
- WAPIFASA – \$5,000

Total \$124,000

*The American Cancer Society, as lead agency and fiscal agent for the proposed grant funds, will assure that accounting controls are sufficient to clearly demonstrate under audit that funds used for lobbying are from non-foundation...sources."*

- 4.39 Also included in the fax were invoices sent by the consulting firm Pyramid Communications to the attention of Kevin Knox at "ACS / Washington BREATHE," and invoices from the media company Belo Marketing Solutions, directed to "American Cancer Society Breathe Campaign." **(Exhibit 12, pp 5-9)** The invoices detailed various expenses, including consultants' fees, printing, mailing and office expenses, food, travel, television production and placement costs.

Attached to each invoice was an internal American Cancer Society payment request submitted by Kevin Knox for the expenses listed on the invoices from Pyramid Communications and Belo Marketing Solutions. **(Exhibit 12, pp 10-14)** Each payment request specified that the listed expenses were to be paid from three specific funds; the funds were labeled "TAARWJSSWA," "TAASSWA," and "1."

A memo included with the payment requests **(Exhibit 12, p 15)** indicated that of the three fund accounts described above, two were unrestricted in nature, and one was restricted. The memo stated that the restricted account, "TAARWJSSWA," held Robert Wood Johnson Foundation grant funds. According to the memo, the remaining two accounts, "TAASSWA" and "1," were unrestricted in nature, and contained funds raised "from contributing coalition members including American Cancer Society, American Heart Association, WAPIFASA, Center for MultiCultural Health and the American Lung Association of Washington."

- 4.40 PDC staff examined the invoices from Pyramid Communications and Belo Marketing Solutions, and compared these to the payment requests submitted by Kevin Knox. Staff noted that \$50,000 was drawn on the

restricted Robert Wood Johnson Foundation grant fund on December 29, 2003, following issuance of an invoice for this amount from Belo Marketing Solutions on December 23, 2004 for advertisements "airing on Belo NW Television Properties." Staff noted that a second invoice for \$50,000 was issued by Belo Marketing Solutions on February 6, 2004; following this date, on February 24, 2004, Mr. Knox requested that Belo Marketing Solutions be paid \$40,000 from unrestricted BREATHE member funds, and \$10,000 from restricted RWJF grant funds.

Staff noted that an invoice was issued by Pyramid Communications on February 24, 2004 for \$15,791 in production costs for BREATHE advertisements in both the grassroots lobbying and "educational" categories, described by Mr. Delvallee's response to the complaint. The same day, \$15,791 was drawn on restricted RWJF grant funds and unrestricted BREATHE member funds; the amount requested from unrestricted funds was \$7,944, slightly more than half the total.

#### **Interview with Kevin Knox**

- 4.41 Kevin Knox, BREATHE project director for the American Cancer Society, was interviewed under oath on July 1, 2004. In the interview, Mr. Knox confirmed that funds for BREATHE's grass roots lobbying came not from the Robert Wood Johnson Foundation, but from BREATHE member organizations. He stated that the members made monetary payments to the American Cancer Society, and that some of these payments were used by the Cancer Society to pay media consulting firms responsible for the television advertisements. He stated that the costs associated with all BREATHE grass roots lobbying television spots were reported on the L-6 filings submitted on April 22, 2004, and that these represented expenditures made directly by the American Cancer Society.
- 4.42 Mr. Knox stated that the \$124,000 commitment from BREATHE member organizations for lobbying activity, described in American Cancer Society's application to the Robert Wood Johnson Foundation's SmokeLess States Program, consisted of payments to the American Cancer Society for use in grass roots lobbying, payments to reimburse the American Cancer Society for direct lobbying expenses, and also included funds which the member organizations were committed to spend directly on lobbying. He described these payments and committed funds as follows:

*"[S]ome of those expenses come in the form of direct cash contributions to the cancer society to make payment for direct lobby expenses. Some of them stay in house and are used for direct lobby expenses, you know, direct from those organizations. Like the Heart Association pays for a*

*lobbyist each legislative session and those monies are counted towards that. It's called a match requirement."*

- 4.43 Mr. Knox stated that grass roots lobbying expenditures made directly by BREATHE member organizations, other than those of the American Cancer Society, were not represented on the L-6 filings submitted on April 22, 2004. With reference to calls to action posted on the Web site [www.lungaction.org](http://www.lungaction.org), he stated the following:

*"The cost associated with them would all be incurred by the American Lung Association... It is not represented [on the American Cancer Society's L-6 filings]. Because those are costs assumed by the American Lung Association so that wouldn't be appropriate for the American Cancer Society to reflect those costs."*

- 4.44 In response to staff's question of whether as BREATHE project director he coordinated the grassroots lobbying activity undertaken by the BREATHE member groups, Mr. Knox stated that he did not. However, he stated that the groups did communicate with one another about their activity:

*"[W]e communicate with each other within the coalition or the alliance. You know, we meet regularly, we talk about the educational activities that we undertake, we talk about grass roots lobbying activities that everybody does and also the direct lobbying activities."*

- 4.45 In response to staff's question of why the choice was made to report the grass roots lobbying expenses of the BREATHE Alliance through the separate organizations, rather than under the aegis of the alliance itself, Mr. Knox stated the following:

*"The original intent with putting the group together was to allow for all of the organizations to kind of come together under some sort of umbrella. Not necessarily a really structured umbrella in which all activities would be dictated through... And in doing that they really wanted to be able to I guess in some way call their own shots, do the things that they wanted to be able to do but do it in an organized fashion so that they weren't, you know, everybody isn't all kind of running out there by themselves or going in different direction... [T]hey all have their own independent lobbying activities already, have in the past, are doing it now and will continue to do it into the future, with each of the organization, well not all of them but some of them having their own direct lobbying activities with lobbyist contractors, staff members that are primarily responsible for lobbying activities, direct lobbying and grass roots lobbying activities. Each of the organizations is kind of set out there to say okay so given the kinds of activities that you're doing, you're going to set your own definitions, your own parameters and*

*be responsible for your own reporting, instead of having somebody else have to do all of that reporting for them...The American Cancer Society said anything that the American Cancer Society writes a check for and is responsible for ultimately for the BREATHE Alliance, it will take responsibility for. But all of the other organizations you will have to be responsible for your own. For the staff people's requirements, you know, the supervision and all of that for the other lobby contracts that you have for the other grass roots and direct lobbying expenses that you incur on your own."*

- 4.46 In response to staff's question of when the first television advertisement containing a call to action regarding the proposed smoking ban was aired, Mr. Knox stated that the advertisement titled "Time to Act" first ran on January 28, 2004, and ran 39 times on Washington television stations in the last four days of that month.
- 4.47 In response to staff's question of what advice he or other individuals associated with BREATHE sought from PDC staff concerning the Alliance's reporting requirement, Mr. Knox stated that he spoke with Vicki Rippie, Executive Director of the Public Disclosure Commission, at the end of the 2004 legislative session. (The 2004 legislative session adjourned on March 11, 2004.) Concerning this conversation, Mr. Knox stated the following:

*"[W]e talked a little bit about what we should, what the BREATHE Alliance and what the Cancer Society should do. And that's when we ultimately determined yes it was probably a good idea for us to look at the expenses that we had incurred as, in relation to the grass roots lobbying. That's when we began to put some of the things together and the complaint came in and then we, you know did even more investigation and that's when Dave Delvallee made calls and started having meetings. So that we could verify where we should be."*

- 4.48 When asked about the September 11, 2003 meeting at the Double Tree Inn, referenced by Ian Foraker in his complaint, Mr. Knox stated that the expenses for this meeting were shared by the BREATHE Alliance and the American Lung Association of Washington. He described his understanding of the meeting as follows:

*"The meeting was originally intended to be an educational meeting just about some of the things that we know about second hand smoke... I don't remember exactly if Senator McAuliffe and McDermott were invited or if they requested to attend the meeting. They wanted to tell people in there and the talk that they kind of gave was this was why we are presenting this legislation...because this piece of legislation was very different than past year's legislation where ventilation standards and different things like that*

*were included in years past. This piece of legislation was different in that it didn't include ventilation standards and part of what was being discussed is you know, here's the intent, here's why, here's what's good about it. You know, here's the scientific evidence behind it kind of thing."*

- 4.49 When asked whether individuals associated with BREATHE who were not registered lobbyists had contact with legislators or legislative staff members regarding the proposed ban on smoking in public places, Mr. Knox stated the following:

*"I don't know who has filed necessarily as lobbyists and who have not and then how all of that was accounted for. Each of the organizations was given that responsibility as each of the staff people were not under any direct supervision of anybody at the American Cancer Society."*

He identified Carrie Nyssen (registered lobbyist for the American Lung Association) and Kelli Balano (lobbyist for the American Heart Association) as individuals associated with BREATHE who had direct contact with legislators or their staff members. He stated that Lee Tanuvasa of WAPIFASA and Brandie Flood of CMCH also had contact with legislators; however, he stated that this contact was "in an educational capacity" concerning the impacts of secondhand smoke on Asian Pacific Islander and African American populations of Washington state. He stated his understanding that Mr. Tanuvasa and Ms. Flood were instructed by their employers not to urge legislators to vote in any particular manner on the proposed smoking ban.

#### **Informal Interview with J. Michael O'Sullivan**

- 4.50 On July 30, 2004, PDC staff conducted an informal interview with J. Michael O'Sullivan, registered lobbyist for the American Cancer Society. Mr. O'Sullivan stated that he believed he had been aware during the 2003 legislative session that Grove Insight had conducted a poll on voter support for anti-tobacco proposals then before the legislature, but he did not have specific recollection of making this poll a part of his lobbying efforts on behalf of the American Cancer Society.

PDC staff informed Mr. O'Sullivan that no report of expenses associated with the Grove Insight poll had appeared on his monthly Lobbyist Expense reports. Staff asked Mr. O'Sullivan if he was aware that lobbyists are required to disclose on their monthly L-2 reports polling expenses sponsored by their employer which are directly or indirectly related to their lobbying effort; he stated that he was not aware of this requirement. In addition, he stated that he was unaware whether the poll was sponsored by the American Cancer Society, and said that he had not received any details

concerning sponsorship of the poll from Kevin Knox, who normally oversaw such expenditures.

**Correspondence from Kevin Knox and David Delvallee**

- 4.51 On August 10, 2004, an email was received from Kevin Knox in response to staff's additional questions. **(Exhibit 13)** In the email, Mr. Knox stated that the Grove Insight poll was sponsored in March of 2003 using funds received through the Robert Wood Johnson Foundation Grant, and funds contributed by the American Lung Association of Washington and the American Heart Association; the amount contributed by BREATHE member organizations was \$3,050. He stated that most of the poll was not used publicly, and only utilized internally for message development.
- 4.52 In a second email received August 10, 2004 **(Exhibit 14)**, Mr. Knox clarified that the American Cancer Society issued the total payment for the Grove Insight poll. He stated that the figure of \$3,050 was paid from an account that included funds from the American Lung Association of Washington, the American Heart Association, and the American Cancer Society. He stated that he could not determine exactly how much each member organization paid for the poll, since the members' payment came out of an unrestricted account including contributions from all three organizations. He stated that the amount paid for the poll from RWJF grant funds was \$9,150.
- 4.53 In his initial email, Mr. Knox stated that the American Lung Association of Washington and the American Heart Association made payments of \$15,000 and \$17,000, respectively, to the American Cancer Society to support its grassroots and direct lobbying efforts. In his follow-up email of the same day, he stated that although some of the funds contributed by the American Lung Association of Washington and the American Heart Association were initially set aside for direct lobbying efforts, none of their eventual uses involved direct lobbying.
- 4.54 Mr. Knox stated in his second email of August 10, 2004 that all BREATHE expenses incurred prior to January 1, 2004 were direct lobbying expenses. He confirmed that all previously-reported grassroots lobbying expenses were incurred after January 1, 2004.
- 4.55 On February 8, 2005, PDC staff sent additional questions to Kevin Knox concerning the meetings he described between representatives of the BREATHE Alliance. On February 10, 2005, staff learned from the American Cancer Society that Mr. Knox was no longer employed by the organization because of the expiration of the BREATHE grant. On



February 11, 2005, an email was received from David Delvallee in response to staff's additional questions. **(Exhibit 15)**

In the email, Mr. Delvallee stated that the meetings described by Mr. Knox consisted of gatherings where the field staff and other employees of the BREATHE member groups exchanged information about where the organizations were having an impact in their efforts to educate members of the public about the dangers of secondhand smoke. As an example, he stated that field staff of member groups who attended a county fair and asked participants to write testimonials about how tobacco had negatively impacted their lives would report back on the number of individuals reached. He stated that certain staff of the member groups who were registered lobbyists would attend these meetings; however, he stated that their participation in the meetings was in their capacity as advocacy directors for their organizations, and unrelated to direct lobbying. He stated that lobbying was discussed, but that the meetings were not strategic planning sessions related to any lobbying campaign.

- 4.56 Based on the interviews with David Delvallee and Kevin Knox, and correspondence from Mr. Knox, it appears that the first reportable expenditure for grassroots lobbying by the BREATHE Alliance was the poll conducted by Grove Insight, which was paid in March 2003 from \$3,050 contributed by the American Cancer Society, the American Heart Association, and the American Lung Association. Because the results of this poll were made public on December 15, 2003 as part of a BREATHE press release, it appears that the expense was required to be reported on an L-6 form by January 14, 2004. The polling expense was first disclosed 209 days late, in an August 10, 2004 email to PDC staff.

In addition, it appears that the \$19,649 in grassroots lobbying expenses incurred by the American Cancer Society between the start of the 2004 legislative session on January 12, 2004 and the end of that month were due to be reported on an L-6 form by February 10, 2004, and were disclosed 72 days late, on April 22, 2004. It appears that the \$36,221 in grassroots lobbying expenses incurred during February of 2004 were required to be disclosed on an L-6 form by March 10, 2004, and were reported 43 days late. Finally, it appears that the \$7,204 in grassroots lobbying expenses incurred during March of 2004 were due to be reported on April 10, 2004, and were reported 12 days late.

#### **Additional L-6 Filing by the American Cancer Society**

- 4.57 On July 8, 2004, an additional L-6 report was received from the American Cancer Society. **(Exhibit 16)** The L-6 report indicated that the expenses

listed were not incurred through a program addressed to the general public to support or oppose state legislation, but instead were made in support of Initiative 890, the statewide ballot measure sponsored by the Breathe Easy Washington campaign. The report listed \$2,336 in offices expenses, travel and salaries incurred in the month of June, 2004. Although the report used to disclose these expenses was incorrect, the expenses were timely reported.

- 4.58 On October 18, 2004, at the request of PDC staff, David Delvallee of the American Cancer Society filed a form L-3c, correctly reporting the \$2,336 as a political contribution by a lobbyist employer to the I-890 Breathe Easy Washington campaign. **(Exhibit 17)**

#### **L-6 Filings by the American Heart Association**

- 4.59 On April 13, 2004, an L-6 report of grass roots lobbying activity was received from the American Heart Association. **(Exhibit 18)** The report disclosed expenses totaling \$23,814 incurred by the American Heart Association for patch-through calls in support of HB 1868 and SB 5791, and disclosed a contribution for this same amount, received from the Campaign for Tobacco-Free Kids in Washington, D.C. The L-6 report did not indicate the period of time in which the grass roots lobbying activity occurred.
- 4.60 On September 8, 2004, a letter was received from Kristen Richmond, Regional Director of Advocacy for the American Heart Association. **(Exhibit 19)** The letter stated the dates on which expenses were incurred by the American Heart Association for grassroots lobbying. It indicated that \$4,750 in grassroots lobbying expenses were incurred on January 19, 2004, that an additional \$7,395 in grassroots lobbying expenses were incurred during February of 2004, that \$6,669 in grassroots lobbying expenses were incurred during March of 2004, and that a final \$5,000 in grassroots lobbying expenses were incurred on April 5, 2004, at which point the campaign was concluded.
- 4.61 Ms. Richmond explained the lateness of her organization's grassroots lobbying report in the following manner:

*"Originally based on earlier conversations with Public Disclosure Commission staff, we thought that we could report these expenses either on our annual L3 Employer's Form or on an L6 Form. After some thought, we decided that these expenses met the L-6 requirements. It was the initial thought that we could include these expenses on the L3 Form that led to the delay in filing our expenses."*

- 4.62 Following the grassroots lobbying campaign begun with the BREATHE press release of December 15, 2003, it appears that the \$4,750 in grassroots lobbying expenses incurred by the American Heart Association on January 19, 2004 were due to be reported on an L-6 form by February 10, 2004, and were disclosed 63 days late, on the L-6 filed by Kristin Richmond on April 13, 2004. It appears that the \$7,395 in grassroots lobbying expenses incurred during February of 2004 were required to be disclosed on an L-6 form by March 10, 2004, and were reported 34 days late. It appears that the \$6,669 in grassroots lobbying expenses incurred during March of 2004 were due to be reported on April 10, 2004, and were reported 3 days late. The final \$5,000 in grassroots lobbying expenses, incurred during April, were reported timely.
- 4.63 In her letter received on September 8, 2004, Ms. Richmond stated that *"[The American Heart Association] contributed \$15,000 to BREATHE as a matching grant. This funding was to be available for unrestricted purposes (lobbying). As this was a grant to BREATHE, it was upon them to record how the money was spent. Again, BREATHE had discretion in spending the money."*
- 4.64 On September 7, 2004, PDC staff conducted an informal interview with Kristen Richmond. Ms. Richmond confirmed the statement by Kevin Knox that the American Heart Association made monetary payments totaling \$17,000 to the American Cancer Society, rather than \$15,000, as she stated in her letter received September 8, 2004. She reiterated her statement in that letter that the \$15,000 was to be spent at the discretion of the American Cancer Society. The remaining \$2,000 payment, she stated, was intended by the American Heart Association to help pay a consultant charged with continuing the activities of the BREATHE Alliance. She stated that no part of this consultant's work involved or anticipated expenditures for grass roots lobbying, an activity which she stated was only part of BREATHE's mission. As a result, she stated that she did not initially believe this \$2,000 was reportable.
- 4.65 On October 5, 2004, an L-3c filing was received from the American Heart Association, disclosing in-kind contributions to the Breathe Easy Washington campaign in support of I-890. **(Exhibit 20)** The report indicated that the American Heart Association contributed \$1,760 in staff services to the Breathe Easy Washington campaign in June of 2004, and contributed this same amount to the Breathe Easy Washington campaign in July of 2004.

- 4.66 The \$1,760 in contributions made by the American Heart Association to the Breathe Easy Washington campaign in June of 2004 were required to be reported on form L-3c by July 15, 2004, and were disclosed 82 days late. The \$1,760 in contributions made to Breathe Easy Washington in July of 2004 were required to be reported by August 15, 2004, and were disclosed 51 days late.

**L-6 Filings by the American Lung Association of Washington**

- 4.67 On July 20, 2004, an L-6 report was received from the American Lung Association of Washington. **(Exhibit 21)** The L-6 report indicated that the expenses listed were not incurred through a program addressed to the general public to support or oppose state legislation, but were rather made in support of Initiative 890, the statewide ballot measure sponsored by the Breathe Easy Washington campaign.
- 4.68 On August 18, 2004, PDC staff contacted Anthony Peterson, Chief Financial Officer of the American Lung Association of Washington, and informed him that the expenses listed on the L-6 report filed on July 20, 2004 appeared to be contributions to a ballot measure committee; as such, they were required to be reported not on PDC form L-6, but on form L-3c, for political contributions by a lobbyist employer.

Staff asked Mr. Peterson to submit L-3c forms for each calendar month in which the American Lung Association of Washington made political contributions totaling more than \$100 which were not reported by a registered lobbyist. Staff explained reporting of grass roots lobbying expenses on form L-6, and asked Mr. Peterson to file L-6 reports disclosing all grass roots lobbying expenses incurred directly by the American Lung Association in support of HB 1868 and SB 5791. In addition, staff asked Mr. Peterson to submit a letter explaining the American Lung Association's relationship with the American Cancer Society and the BREATHE Alliance.

- 4.69 On August 25, 2004, the requested L-3c filings were received from the American Lung Association of Washington. **(Exhibit 22, pp 3-6)** The reports indicated that the American Lung Association made in-kind contributions totaling \$259 to the I-890 Breathe Easy Washington campaign in March of 2004, contributions totaling \$205 to the same committee in April of 2004, contributions totaling \$786 in May of 2004, and contributions totaling \$1,422 in June of 2004. The total reported in-kind contributions made by the American Lung Association of Washington to the Breathe Easy Washington campaign were valued at \$2,672.

4.70 The \$259 in contributions made by the American Lung Association of Washington to the Breathe Easy Washington campaign in March of 2004 were required to be reported on form L-3c by April 15, 2004, and were disclosed 96 days late on the L-6 report erroneously filed on July 20, 2004. The \$205 in contributions made to Breathe Easy Washington in April of 2004 were required to be reported by May 15, 2004, and were disclosed 66 days late. The \$786 in contributions made to Breathe Easy Washington in May of 2004 were required to be reported by June 15, 2004, and were disclosed 35 days late. The \$1,422 in contributions made to Breathe Easy Washington in June of 2004 were required to be reported by July 15, 2004, and were disclosed 5 days late.

4.71 The filings received on August 25, 2004 from the American Lung Association of Washington included L-6 reports of previously-unreported grass roots lobbying expenses incurred during the month of September of 2003, and January through April of 2004. **(Exhibit 22, pp 7-16)** The reports indicated that the topic of the legislation supported was "Secondhand smoke – smoke free workplaces," and identified the organizer of the campaign as "Washington Breathe C/O American Cancer Society."

The reports indicated that the American Lung Association of Washington incurred \$335 in grass roots lobbying expenses in September of 2003, \$282 in grassroots lobbying expenses in January of 2004, \$153 in grassroots lobbying expenses in February of 2004, \$80 in grassroots lobbying expenses in March of 2004, and \$176 in grassroots lobbying expenses in April of 2004. The expenses were described in each month's report as "office expense, travel, salaries." The reports stated that no contributions were received by the American Lung Association of Washington to assist with these grassroots lobbying expenses. The total grass roots lobbying expenses reported by the American Lung Association of Washington were valued at \$1,026, over a period of eight months.

4.72 In his letter accompanying the L-3c and L-6 reports, received on August 26, 2004 **(Exhibit 22, pp 1-2)**, Mr. Peterson stated that the American Lung Association staff member most experienced in the disclosure of lobbying activity left the association in May of 2004. He stated that the grassroots lobbying around secondhand smoke legislation was new territory for the association:

*"Because grassroots lobbying efforts have always been an insignificant part of our work here at the American Lung Association of Washington, we were unaware of the correct disclosure filings. With your help, I hope to increase my knowledge in these areas to ensure our future compliance."*

Mr. Peterson confirmed that the American Lung Association of Washington contributed \$15,000 to support the BREATHE Alliance. He stated that the American Lung Association requested information from the American Cancer Society concerning how the funds would be spent. He stated that they were informed by the American Cancer Society that the funds would support direct and grassroots lobbying activity.

- 4.73 It appears that the \$335 in grass roots lobbying expenses incurred by the American Lung Association of Washington during September of 2003 did not exceed the threshold specified in RCW 42.17.200 of \$500 in grass roots lobbying expenditures in a one month period, or \$1,000 in grass roots lobbying expenditures in a three month period. (The December 15, 2003 BREATHE press release, containing the results of a public opinion survey sponsored in part by the American Lung Association, was released in the fourth month following the Lung Association's September 2003 grass roots lobbying expenditures.)

However, following the grassroots lobbying campaign begun with the BREATHE press release of December 15, 2003, it appears that the \$282 in grassroots lobbying expenses incurred by the American Lung Association in January of 2004 were required to be disclosed on form L-6 by February 10, 2004. The expenses were first reported on August 25, 2004, 197 days late. In addition, it appears that the American Lung Association was required to file a form L-6 by March 10, 2004, disclosing \$153 in additional grassroots lobbying expenses incurred in February of 2004; these expenses were first reported on August 25, 2004, 168 days late. It appears that the American Lung Association was required to file a form L-6 by April 10, 2004, disclosing \$80 in additional grassroots lobbying expenses incurred in March of 2004; these expenses were first reported on August 25, 2004, 137 days late. Finally, it appears that the American Lung Association was required to file a form L-6 by May 10, 2004, disclosing \$176 in additional grassroots lobbying expenses incurred in April of 2004; these expenses were first reported on August 25, 2004, 107 days late.

- 4.74 Regarding the September 11, 2003 BREATHE meeting in SeaTac, Mr. Peterson of the American Lung Association stated the following in his letter received August 26, 2004:

*"I discussed with Carrie Nyssen, our BREATHE grant employee, the nature of the September 11, 2003 meeting at the Doubletree that you had mentioned. She informed me that she felt there was significant 'Call to Action' information shared, and that it would be wise to include expenses for this meeting in our L-6 filing. The American Lung Association of Washington's involvement with this meeting was limited, however, and the expenses were few. It was attended by only two staff members who*

*incurred travel expenses. Carrie also provided some refreshments for the meeting."*

Finally, Mr. Peterson stated that the only grassroots lobbying expenses incurred directly by his organization, other than those associated with the September 11, 2003 meeting, were the costs of staff time spent maintaining Web pages which contained calls to action, and performing work on the American Lung Association of Washington's Legislative Network action-alert email system.

- 4.75 On October 25, 2004, an email was received from Carrie Nyssen, in response to staff's request for additional information concerning the September 11, 2003 BREATHE meeting in SeaTac. **(Exhibit 23, pp 1-2)** In her email, Ms. Nyssen described role-playing exercises and other training provided at the meeting as part of an effort to broaden anti-smoking coalitions. She described this training in the following manner:

*"Two particular scenarios I recall being acted out was 1) a citizen approaching a city councilperson about keeping public entrances smokefree and 2) a smokefree advocate meeting the head of the Hospital Association to endorse and embrace smokefree efforts...During my conversation with Tony Peterson this summer, I believed a call to action was engaging folks to join in and actively participate in the efforts we had begun around secondhand smoke. With this definition in my head, I would have considered the... meeting a call to action as we were rallying participants and encouraging them to work with us and build our network of concerned residents... I would now define a call to action as a specific request for folks to contact their state legislators and asking support for, or a vote against a specific piece of legislation. I do not remember this happening during the morning part of the meeting. And in the group that I was working with during the afternoon session, I do not remember any role play with a state legislator."*

- 4.76 On October 25, 2004, an email was received from Kevin Knox in response to staff's request for additional information concerning the September 11, 2003 BREATHE meeting in SeaTac. **(Exhibit 23, p 3)** In his email, Mr. Knox stated the following:

*"[T]he role play discussion and actual role play exercises were centered around the issue of developing networks and coalitions. Part of the role play did focus on how to address elected officials, however I believe that was actually on the topic of addressing local elected officials like city councils and local boards of health. A great deal of the information discussed was also centered around the health concerns around secondhand smoke and those impacts on workers and the public."*

*The coalition building and network development included a role play to address a hospital association to inform them of the health concerns related to secondhand smoke, workers and the public. The intended outcome of that discussion was to help local advocates to grow their own networks most effectively...As for the discussions about contacting legislators on the specific clean indoor air... I don't remember it being a specific topic. Rep McDermott and Sen McAuliffe mentioned that they were the sponsors of the legislation and why they felt it was necessary. As well Nick Federici, in presenting an update to the group on tobacco specific legislation currently out there, likely discussed where the bills were at the time and how they might move forward in the upcoming session. Although to my recollection, the afternoon facilitator did not directly address contacting state legislators about either the House or Senate Legislation or Legislators."*

#### **Direct Lobbying Activity on Behalf of WAPIFASA**

- 4.77 On July 15, 2004, PDC staff contacted Lee Tanuvasa of the Washington Pacific Islander Families Against Substance Abuse, requesting information concerning his contacts with legislators or legislative staff members, and concerning his organization's relationship with the BREATHE Alliance.

On July 23, 2004, a written response to staff's questions was received from Lee Tanuvasa. **(Exhibit 24)** In response to staff's questions concerning the number of contacts he made with legislators or legislative staff, and the nature of these contacts, Mr. Tanuvasa stated the following:

*"All of my contacts with Legislators were educational in nature, explaining impacts of secondhand smoke. I did not make any entertainment expenditures in connection with these contacts. It is my understanding educational contacts are not considered lobbying. During the last week of 2004 session, the BREATHE office emailed out an action alert to all the grassroots field staff to contact legislators who were discussing the Clean Indoor Air bill. I forwarded the email to individuals on my contact list, and I also wrote an email to the Legislators requesting an explanation of where they stood on the Clean Indoor Air bill."*

Mr. Tanuvasa went on to state that WAPIFASA made no expenditures to any entity in connection with the BREATHE call to action television advertisements. In reference to the information provided by David Delvallee, indicating that WAPIFASA had contributed or committed \$5,000 to support BREATHE's lobbying activity, Mr. Tanuvasa stated that this figure represented 10% of his salary, paid by WAPIFASA.



- 4.78 In a follow-up email received August 4, 2004 in response to staff's additional questions (**Exhibit 25**), Mr. Tanuvasa stated that, in addition to his email to legislators concerning the clean indoor air bill, he had one meeting with legislative staff on January 13, 2004. He stated that he also attended a legislator's town hall meeting in her district on two occasions, but did not meet with the legislator individually.

In his follow-up email, Mr. Tanuvasa clarified that WAPIFASA made no expenditures for any call to action, including but not limited to television advertisements.

- 4.79 Based on the information provided to PDC staff by Lee Tanuvasa, staff found that he was paid to conduct direct lobbying on behalf of WAPIFASA. Staff found that he had direct contact with legislators or legislative staff on less than four occasions and made no entertainment expenditures as a part of this minimal lobbying effort. Additionally, no evidence was found demonstrating that WAPIFASA made grass roots lobbying expenditures.

#### **Direct Lobbying Activity on Behalf of CMCH**

- 4.80 On July 28, 2004, staff conducted an informal interview with Brandie Flood of the Center for MultiCultural Health (CMCH). Ms. Flood confirmed that she had direct contact with state legislators on behalf of her employer, but stated that this contact generally concerned continued funding for community health groups that contract through the State Department of Health. She stated that she did not recall any discussion at these meetings of the proposed legislation banning smoking in indoor public places.

Ms. Flood stated that she had meetings with legislators or legislative staff members on only four occasions; she stated that none of these meetings involved any entertainment expenditures. In addition, she stated that she mailed or emailed correspondence to legislators on two occasions. Her contacts with legislators or legislative staff members were as follows:

<b>Date</b>	<b>Activity</b>
October 28, 2003	Meeting with Rep. Eric Pettigrew in Seattle
Mid-December	Emailed invitation to legislators for January 13, 2004 policy forum
January 13, 2004	Policy Forum at St. John's Episcopal Church in Olympia; met with Reps. Dennis Flannigan and Mark Miloscia
January 22, 2004	Smokefree Policy Day in Olympia; met with Rep. Toby Nixon

January 23, 2004	Mailed thank-you letter to legislators who attended January 13, 2004 policy forum
February 9, 2004	Meeting with Rep. David Simpson in Olympia

Ms. Flood stated that with the exception of her January 22, 2004 meeting with Toby Nixon, at which a staff member of the American Heart Association was present, no other representatives or staff of BREATHE member organizations were present at her meetings with legislators.

- 4.81 On July 29, 2004, at the request of PDC staff, Brandie Flood submitted copies of her emailed invitation to the January 13, 2004 policy forum at St. John's Episcopal Church, and her January 23, 2004 thank-you letter to legislators. **(Exhibit 26)**

Ms. Flood stated that the email **(Exhibit 26, p 2)** was sent to legislators representing diverse districts; it invited recipients to attend an event on January 13, 2004 titled "Building Partnerships for Our Communities' Health: A Policy Forum for Tobacco Prevention & Control." Staff noted that the invitation discussed the date and location of the event, and indicated that the forum was sponsored by various entities, including the Center for MultiCultural Health, WAPIFASA and BREATHE. The invitation did not advocate for the sponsors' position on any piece of legislation or rules.

Ms. Flood's January 23, 2004 letter to legislators **(Exhibit 26, p 3)** thanked recipients for participating in the January 13, 2004 policy forum, and discussed the efforts of CMCH and other community groups *"to eliminate secondhand smoke in indoor public places through advocacy and education and to ensure that Washington State continues to use tobacco settlement dollars to support tobacco prevention and control initiatives[.]"*

- 4.82 On September 7, 2004, a written response to staff's questions was received from Shelley Cooper-Ashford, Executive Director of CMCH. **(Exhibit 27)** A follow-up email received September 8, 2004 clarified Ms. Cooper-Ashford's previous response. In her emails, Ms. Cooper-Ashford confirmed that Brandie Flood had in-person contact with legislators on four occasions, and on two occasions made contact in writing, as previously described by Ms. Flood. She confirmed further that Ms. Flood was paid for her work on these occasions, but made no entertainment expenditures. She described Ms. Flood's contact with legislators as follows:

*"Brandie...explained our participation in the Wa Breathe Coalition and the role in which we saw CMCH providing as a member of the coalition. Explaining that we would be involved in a grassroots campaign to educate diverse communities of the dangers of second hand smoke in and effort to*

*gain community support in banning smoking in indoor public places without the mention of specific bills.”*

She stated that CMCH did not view Ms. Flood’s activity as reportable lobbying, but rather community education and advocacy.

In addition to the activities described above, Ms. Cooper-Ashford stated that during the period of a 16-month contract with the American Cancer Society, Ms. Flood provided community education around secondhand smoke, tobacco prevention and control at a variety of community events, including community festivals, health fairs, schools and churches. During this time period, Ms. Flood’s salary was \$58,333, or \$3,645 per month.

Ms. Cooper-Ashford stated that CMCH made no monetary expenditures connected with BREATHE’s television advertisements or other calls to action, and that other than Brandie Flood’s salary, the only expense connected with BREATHE which CMCH incurred was the cost of Ms. Cooper-Ashford’s time spent in BREATHE meetings.

- 4.83 Based on information provided by Brandie Flood in an informal interview with staff, in the correspondence staff received from Ms. Flood on July 29, 2004, and in the written statement by Shelley Cooper-Ashford, it appears that Brandie Flood made lobbying contact with legislators or legislative staff on no more than four occasions in any three month period, including the three months between December 2003 and February 2004, in which she had three in-person lobbying contacts and one written lobbying contact.
- 4.84 No evidence was found demonstrating that CMCH made grass roots lobbying expenditures.

#### **Reporting of Contributions by the I-890 Breathe Easy Washington Campaign**

- 4.85 On September 23, 2004, the Breathe Easy Washington campaign in support of I-890 filed a C-4 report listing in-kind contributions from the American Cancer Society and the American Lung Association, in the form of expenses associated with signature gathering. **(Exhibit 28)** Contributions from the American Cancer Society were listed at a value of \$2,336; contributions from the American Lung Association were listed at a value of \$2,672.
- 4.86 On October 12, 2004, the Breathe Easy Washington campaign filed a C-4 report listing in-kind contributions from the American Heart Association, in

the form of expenses associated with signature gathering. **(Exhibit 29)**  
The contributions were listed at a value of \$1,760.

- 4.87 On October 18, 2004, the Breathe Easy Washington campaign filed an amended C-4 report listing additional in-kind contributions from the American Heart Association, in the form of expenses associated with signature gathering. **(Exhibit 30)** The total contributions from the American Heart Association, including those previously reported, were valued at \$3,520.
- 4.88 The American Lung Association reported that in-kind contributions valued between \$205 to \$1,422 each month were made to the Breathe Easy Washington campaign during the months of March, April, May, and June 2004. Specifically, the association made contributions totaling \$259 to the I-890 Breathe Easy Washington campaign in March of 2004, contributions totaling \$205 to the same committee in April of 2004, contributions totaling \$786 in May of 2004, and contributions totaling \$1,422 in June of 2004. Receipt of these contributions was required to be reported to the PDC by the Breathe Easy campaign by the tenth of each month following the months in which the contributions were received. It appears that the contributions were reported between 166 and 75 days late, on September 23, 2004.
- 4.89 The American Cancer Society reported that \$2,336 in in-kind contributions to the Breathe Easy Washington campaign were rendered during the month of June 2004. Receipt of these contributions was required to be reported to the PDC by the Breathe Easy campaign by no later than July 10, 2004. It appears that the contributions were reported 75 days late, on September 23, 2004.
- 4.90 The American Heart Association reported that \$3,520 in in-kind contributions to the Breathe Easy Washington campaign were rendered during the months of June and July 2004. Receipt of each month's contributions was required to be reported to the PDC by the Breathe Easy campaign by July 10, 2004 and August 10, 2004, respectively. It appears that the contributions were reported between 94 and 69 days late, on October 12 and October 18, 2004.
- 4.91 On October 7, 2004, responses to staff's questions concerning the timeliness of contribution reports filed by the Breathe Easy Washington campaign were received from Sue Asher, the I-890 committee's treasurer. **(Exhibit 31)** In response to staff's question of why reports of in-kind contributions from the American Cancer Society, American Lung Association, and American Heart Association were not timely reported by the Breathe Easy campaign, Ms. Asher stated the following:

*"The campaign had no knowledge of the in-kind contributions until notified by PDC. BreatheEasy campaign gave these organizations petitions however we had no knowledge that by giving them petitions we would be charged an in-kind contribution and what the amount of that in-kind contribution would be."*

Staff informed Ms. Asher that reports filed by the American Lung Association listed Patty Carlson, the sponsor of I-890, as their contact person at the Breathe Easy Washington campaign, and that the American Cancer Society and the American Heart Association listed Scott Peterson as their contact person with the campaign. Ms. Asher stated that Scott Peterson was a political consultant retained by her committee; she went on to state that the Breathe Easy campaign was normally notified in writing concerning in-kind contributions, and that this notification was normally received by Scott Peterson. She stated that neither Scott Peterson nor Patty Carlson received written or verbal notification of in-kind contributions from the American Cancer Society, American Lung Association, and American Heart Association. She stated that to her knowledge, all monetary and in-kind contributions to the I-890 campaign had now been disclosed in the committee's PDC filings.

#### **Summary of Late Reporting or Failure to Report by Entities Associated with the WA BREATHE Alliance**

(See attachment to Report of Investigation: "Summary of Expenditures Made in Connection with the Washington BREATHE Alliance's Grassroots Lobbying Campaign in Support of 2004 HB 1868 and SB 5791")

- 4.92 **The Northwest Division of the American Cancer Society** incurred \$12,200 in expenses for a poll conducted in February of 2003 regarding voter support for indoor smoking bans and local control of smoking restrictions. \$9,150 of this amount was paid from a grant from the Robert Wood Johnson Foundation to the American Cancer Society. The remainder, \$3,050, was paid from funds contributed to the American Cancer Society by the American Heart Association and the American Lung Association, as well as from the American Cancer Society's own funds. The polling expense was not reported by the American Cancer Society, or by the organization's registered lobbyist at that time, J. Michael O'Sullivan. (Mr. O'Sullivan stated to PDC staff that no details of the poll's expense or its sponsorship were communicated to him for the purposes of reporting; he stated further that while he was aware that the poll had been conducted, he had no recollection of making the poll a part of his lobbying effort.)

On December 15, 2003, the results of this poll were used as part of a BREATHE press release produced by Pyramid Consulting. L-6 filings submitted by the American Cancer Society did not include the original \$3,050 cost to the BREATHE member organizations to sponsor the poll. Because this \$3,050 appears to be the first reportable expenditure for grassroots lobbying by a member of the BREATHE Alliance, the expense was required to be reported on an L-6 form by January 14, 2004. It appears that the polling expense was first disclosed 209 days late, in an August 10, 2004 email to PDC staff.

In addition, it appears that the American Cancer Society or the Washington BREATHE Alliance was required to file a form L-6 by February 10, 2004, disclosing \$19,649 in grassroots lobbying expenses incurred during January of 2004 for television advertisements and other grassroots lobbying. The expenses were disclosed 72 days late, on April 22, 2004. It appears that \$36,221 in grassroots lobbying expenses incurred during February of 2004 were required to be disclosed on an L-6 form by March 10, 2004, and were reported 43 days late, on April 22, 2004. It appears that \$7,204 in grassroots lobbying expenses incurred during March of 2004 were due to be reported on April 10, 2004, and were reported 12 days late, on April 22, 2004.

**4.93 The American Lung Association of Washington** incurred \$282 in grassroots lobbying expenses in January of 2004 for Web site maintenance and related activities. Following the grassroots lobbying campaign begun with the BREATHE press release of December 15, 2003, it appears that the American Lung Association or the Washington BREATHE Alliance was required to file a form L-6 by February 10, 2004, disclosing these \$282 in expenses. The expenses were first reported on August 25, 2004, 197 days late. It appears that the American Lung Association or the BREATHE Alliance was required to file a form L-6 by March 10, 2004, disclosing \$153 in additional grassroots lobbying expenses incurred in February of 2004; these expenses were first reported on August 25, 2004, 168 days late. It appears that the American Lung Association or the BREATHE Alliance was required to file a form L-6 by April 10, 2004, disclosing \$80 in additional grassroots lobbying expenses incurred in March of 2004; these expenses were first reported on August 25, 2004, 137 days late. Finally, it appears that the American Lung Association or the BREATHE Alliance was required to file a form L-6 by May 10, 2004, disclosing \$176 in additional grassroots lobbying expenses incurred in April of 2004; these expenses were first reported on August 25, 2004, 107 days late.

In addition, it appears that the American Lung Association was required to file a form L-3c by April 15, 2004, disclosing \$258 in in-kind contributions

made to the Breathe Easy Washington campaign in March of 2004. The contributions were disclosed 96 days late, on the L-6 report erroneously filed on July 20, 2004. It appears that in-kind contributions totaling \$205 made to the Breathe Easy Washington campaign in April of 2004 were required to be reported by May 15, 2004, and were disclosed 66 days late, on July 20, 2004. It appears that \$786 in contributions made to Breathe Easy Washington in May of 2004 were required to be reported by June 15, 2004, and were disclosed 35 days late, on July 20, 2004. It appears that \$1,422 in contributions made to Breathe Easy Washington in June of 2004 were required to be reported by July 15, 2004, and were disclosed 5 days late, on July 20, 2004. The in-kind contributions described above were later correctly reported on the L-3c forms filed on August 25, 2004.

- 4.94 On January 19, 2004, the **American Heart Association Pacific/Mountain Affiliate** incurred \$4,750 in expenses for grassroots lobbying consulting in support of the proposed indoor smoking ban. Following the grassroots lobbying campaign begun with the BREATHE press release of December 15, 2003, it appears that the American Heart Association or the Washington BREATHE Alliance was required to file a form L-6 by February 10, 2004, disclosing these consulting expenses. The expenses were disclosed 63 days late on April 13, 2004. It appears that \$7,395 in grassroots lobbying expenses incurred during February of 2004 were required to be disclosed on an L-6 form by March 10, 2004, and were reported 34 days late, on April 13, 2004. Finally, it appears that \$6,669 in grassroots lobbying expenses incurred during March of 2004 were due to be disclosed on April 10, 2004, and were reported 3 days late, on April 13, 2004.

In addition, it appears that in-kind contributions totaling \$1,760 made by the American Heart Association to the Breathe Easy Washington campaign in June of 2004 were required to be reported on form L-3c by July 15, 2004, and were disclosed 82 days late, on October 5, 2004. \$1,760 in contributions made to Breathe Easy Washington during July of 2004 were required to be reported by August 15, 2004, and were disclosed 51 days late, on October 5, 2004.

- 4.95 It appears that the **Breathe Easy Washington I-890 committee** was required to report in-kind contributions in the form of signature gathering services, valued between \$205 to \$1,422 and totaling \$2,672, received from the American Lung Association of Washington during the months of March, April, May, and June 2004. C-4 reports listing these contributions were due to be filed the 10<sup>th</sup> of the month following the date the contributions were received; the contributions were reported between 166 and 75 days late, on September 23, 2004.

In addition, it appears that Breathe Easy Washington was required to report in-kind contributions in the form of signature gathering services totaling \$2,336 from the American Cancer Society on a C-4 form due by July 10, 2004. The contributions were reported 75 days late, on September 23, 2004.

Finally, it appears that Breathe Easy Washington was required to report \$1,760 in in-kind contributions in the form of signature gathering services received from the American Heart Association in June of 2004 on a C-4 form due July 10, 2004, and was required to report an additional \$1,760 in in-kind contributions in the form of signature gathering services received in July of 2004 on a C-4 form due August 10, 2004. The contributions were reported between 94 and 69 days late, on October 12 and October 18, 2004.

Sue Asher, treasurer for the Breathe Easy Washington campaign, stated that her committee did not timely report in-kind contributions connected with signature gathering by the American Cancer Society, American Lung Association, and American Heart Association because they had no knowledge that the petitions involved an in-kind contribution. She stated that her committee received neither written nor verbal notification of the value of these in-kind contributions.

### **Unsubstantiated Allegations**

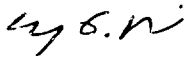
- 4.96 Based on the information provided to PDC staff by Lee Tanuvasa, it appears that he was paid to conduct direct lobbying on behalf of Washington Pacific Islander Families Against Substance Abuse (WAPIFASA). However, he had direct contact with legislators or legislative staff on less than four occasions and made no entertainment expenditures as a part of this minimal lobbying effort.
- 4.97 Based on the information provided to PDC staff by Brandie Flood, it appears that she was paid to conduct direct lobbying on behalf of the Center for MultiCultural Health (CMCH). However, she had direct lobbying contact with legislators or legislative staff on no more than four occasions in any three month period, and made no entertainment expenditures as a part of this lobbying effort.
- 4.98 Staff found no evidence to demonstrate that that WAPIFASA made grass roots lobbying expenditures.



4.99 Staff found no evidence to demonstrate that the CMCH made grass roots lobbying expenditures.

4.100 Through the various staff representatives of its member organizations, the Washington BREATHE Alliance fully cooperated with PDC staff during the investigation of this complaint.

Respectfully submitted this 23<sup>rd</sup> day of February, 2005.



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Tony Perkins  
Political Finance Specialist

### **EXHIBIT LIST**

- Exhibit 1** Complaint by Ian Foraker, received on March 29, 2004.
- Exhibit 2** Mail-ready postcard to legislators, printed from the BREATHE Web site.
- Exhibit 3** Page printed from the BREATHE Web site, containing sample questions relating to SB 5791 / HB 1868 and advice for effective communication with members of the legislature.
- Exhibit 4** Emailed invitation to a BREATHE meeting on September 11, 2003 at the Double Tree Hotel in SeaTac, Washington.
- Exhibit 5** Results of a public opinion survey conducted for BREATHE by the polling firm Grove Insight.
- Exhibit 6** BREATHE press release dated December 15, 2003.
- Exhibit 7** Web page printed from the domain [www.lungaction.org](http://www.lungaction.org), containing a call to action in support of SB 5791 / HB 1868 and a sample constituent letter.
- Exhibit 8** Email sent originally by Kevin Knox, BREATHE Project Director, and forwarded to PDC staff on May 26, 2004 by Linda Matson.
- Exhibit 9** Memo to file from Phil Stutzman, PDC Director of Compliance, regarding an April 9, 2004 conversation with Kevin Knox.
- Exhibit 10** Response to the complaint filed by Ian Foraker, received from David Delvallee, Advocacy Director of the American Cancer Society, on April 22, 2004, with L-6 filings and documentation concerning grassroots lobbying television advertisements enclosed.
- Exhibit 11** Excerpts from a call for proposals for grants offered by the Robert Wood Johnson Foundation in connection with its SmokeLess States program, printed from the Web site [www.rwjf.org](http://www.rwjf.org).
- Exhibit 12** Fax received on June 3, 2004 from David Delvallee, containing correspondence and other documents related to the American Cancer Society's grant application to the Robert Wood Johnson Foundation's SmokeLess States Program, and including invoices

and payment account information for expenditures undertaken by the American Cancer Society.

- Exhibit 13** Email from Kevin Knox in response to staff's additional questions, received on August 10, 2004.
- Exhibit 14** Second email from Kevin Knox in response to staff's additional questions, received on August 10, 2004.
- Exhibit 15** Email from David Delvallee in response to staff's additional questions, received on February 11, 2005.
- Exhibit 16** L-6 report received from the American Cancer Society on July 8, 2004.
- Exhibit 17** L-3c report received from the American Cancer Society on October 18, 2004.
- Exhibit 18** L-6 report received on April 13, 2004 from the American Heart Association.
- Exhibit 19** Letter received from Kristen Richmond, Regional Director of Advocacy for the American Heart Association, on September 8, 2004.
- Exhibit 20** L-3c report received from the American Heart Association on October 5, 2004.
- Exhibit 21** L-6 report received from the American Lung Association of Washington on July 20, 2004.
- Exhibit 22** L-3c and L-6 reports filed on August 25, 2004 and received on August 26, 2004, with correspondence from Anthony Peterson, Chief Financial Officer of the American Lung Association of Washington.
- Exhibit 23** Emails received from Carrie Nyssen and Kevin Knox on October 25, 2004.
- Exhibit 24** Written response to staff's questions received from Lee Tanuvasa on July 23, 2004.
- Exhibit 25** Follow-up email in response to staff's additional questions, received from Lee Tanuvasa on August 4, 2004.

- Exhibit 26** Copies of correspondence from Brandie Flood, Community Organizer for the Center for MultiCultural Health, submitted by Ms. Flood on July 29, 2004.
- Exhibit 27** Written response to staff's questions, received from Shelley Cooper-Ashford, Executive Director of CMCH, on September 7, 2004.
- Exhibit 28** C-4 report filed by the Breathe Easy Washington I-890 campaign on September 23, 2004.
- Exhibit 29** C-4 report filed by the Breathe Easy Washington I-890 campaign on October 12, 2004.
- Exhibit 30** Amended C-4 report filed by the Breathe Easy Washington I-890 campaign on October 18, 2004.
- Exhibit 31** Responses to staff's questions received from Sue Asher, treasurer for the Breathe Easy Washington I-890 committee, on October 7, 2004.

**Attachment:**

Summary of Expenditures Made and Contributions Received in Connection with the Washington BREATHE Alliance's Grassroots Lobbying Campaign in Support of 2004 HB 1868 and SB 5791

Attachment to Report of Investigation in PDC Case #04-446:  
Summary of Expenditures Made in Connection with the Washington BREATHE Alliance's  
Grassroots Lobbying Campaign in Support of 2004 HB 1868 and SB 5791

**Expenditure Activity**

Entity	Activity	Value	Dates of Activity	Date Report Due	Reported On	Days Late
American Cancer Society	Release of Poll Results	\$12,200	December 15, 2004	January 14, 2004	*August 10, 2004	209
American Cancer Society	Television Advertising	\$8,775	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Brochures, Signs	\$6,552	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Printing, Mailing	\$500	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Consultants	\$2,652	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Office Expenses, Travel, Salaries	\$1,020	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Other	\$150	Jan 12 – 31, 2004	February 10, 2004	April 22, 2004	72
American Cancer Society	Television Advertising	\$31,500	Feb 1 – 29, 2004	March 10, 2004	April 22, 2004	43
American Cancer Society	Consultants	\$2,652	Feb 1 – 29, 2004	March 10, 2004	April 22, 2004	43
American Cancer Society	Office Expenses, Travel, Salaries	\$1,563	Feb 1 – 29, 2004	March 10, 2004	April 22, 2004	43

\*Amount of expenditure first disclosed in correspondence to PDC staff on August 10, 2004.

Entity	Activity	Value	Dates of Activity	Date Report Due	Reported On	Days Late
American Cancer Society	Other	\$506	Feb 1 – 29, 2004	March 10, 2004	April 22, 2004	43
American Cancer Society	Brochures, Signs	\$3,552	Mar 1 – 31, 2004	April 10, 2004	April 22, 2004	12
American Cancer Society	Consultants	\$2,652	Mar 1 – 31, 2004	April 10, 2004	April 22, 2004	12
American Cancer Society	Office Expenses, Travel, Salaries	\$850	Mar 1 – 31, 2004	April 10, 2004	April 22, 2004	12
American Cancer Society	Other	\$150	Mar 1 – 31, 2004	April 10, 2004	April 22, 2004	12
<b>Total American Cancer Society Expenditures</b>		<b>\$75,274</b>				
American Heart Association	Consultants	\$4,750	January 19, 2004	February 10, 2004	April 13, 2004	63
American Heart Association	Office Expenses, Travel, Salaries	\$369	February 4, 2004	March 10, 2004	April 13, 2004	34
American Heart Association	Patch-Through Calls	\$7,026	February 4, 2004	March 10, 2004	April 13, 2004	34
American Heart Association	Patch-Through Calls	\$1,669	March 5, 2004	April 10, 2004	April 13, 2004	3
American Heart Association	Consultants	\$5,000	March 8, 2004	April 10, 2004	April 13, 2004	3

Entity	Activity	Value	Dates of Activity	Date Report Due	Reported On	Days Late
American Heart Association	Consultants	\$5,000	April 5, 2004	May 10, 2004	April 13, 2004	0
<b>Total American Heart Association Expenditures</b>		<b>\$23,814</b>				
American Lung Association	Office Expenses, Travel, Salaries	\$331	Sept 1 – 30, 2003	Not Reportable	August 25, 2004	0
American Lung Association	Other	\$4	Sept 1 – 30, 2003	Not Reportable	August 25, 2004	0
American Lung Association	Office Expenses, Travel, Salaries	\$282	Jan 1 – 31, 2004	February 10, 2004	August 25, 2004	197
American Lung Association	Office Expenses, Travel, Salaries	\$153	Feb 1 – 29, 2004	March 10, 2004	August 25, 2004	168
American Lung Association	Office Expenses, Travel, Salaries	\$80	Mar 1 – 31, 2004	April 10, 2004	August 25, 2004	137
American Lung Association	Office Expenses, Travel, Salaries	\$176	April 1 – 30, 2004	May 10, 2004	August 25, 2004	107
<b>Total American Lung Association Expenditures</b>		<b>\$1,026</b>				
		<b>\$100,114</b>	<b>Total Expenditures by Washington BREATHE Alliance Members</b>			

Attachment to Report of Investigation in PDC Case #04-446:  
Summary of Contributions Received in Connection with the Washington BREATHE Alliance's  
Grassroots Lobbying Campaign in Support of 2004 HB 1868 and SB 5791

**Contribution Activity**

Entity	Activity	Value	Dates of Activity	Date Due	Reported On	Days Late
American Heart Association	Contribution from Campaign for Tobacco-Free Kids	\$23,814	April 2004	May 10, 2004	April 13, 2004	0
American Cancer Society	Contribution from American Heart Association	\$15,000	February 2004	March 10, 2004	*August 10, 2004	153
American Cancer Society	Contribution from American Lung Association	\$15,000	February 2004	March 10, 2004	*August 10, 2004	153

\*Amount of contributions first disclosed in correspondence to PDC staff on August 10, 2004.